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EXAMINER

STRIMBU, GREGORY J

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/900,442
Filing Date: July 06, 2001
Appellant(s): REITHMEYER ET AL.

MAILED

OCT 10 2006

GROUP 3600

Keats A. Quinalty
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 27, 2006 appealing from the Office
action mailed March 23, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Synder. Headrick discloses an entryway system comprising a frame 11, 52 and a header (not shown) including a peripheral weather strip (not shown, but see column 6, lines 21-23) positioned on both sides of the frame, the frame bottom additionally comprising an extruded aluminum threshold member 12 joined to the frame with an end cap corner key 36 positioned between the frame and the threshold member, the threshold forming a tank 27 such that the threshold member can accumulate and drain environmental water to the exterior of the frame, and a slab 54 mounted on the frame with a hinge member 56, a sealing element 43 positioned between the end cap corner key and the water tank. Headrick is silent concerning a weather strip positioned substantially on the bottom of the frame and an adjustable hinge.

However, Fehr discloses a weather strip 5 positioned substantially on the bottom 15 of a frame and a top 16 of the frame to seal against a door when the door is in a closed position.

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It would have been obvious to one of ordinary skill in the art to provide the snugger strip 31 of Headrick with a sealing function, as taught by Fehr, to better seal the slab with respect to the frame.

Additionally, Hellstrom discloses a vertically adjustable hinge.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a hinge, as taught by Hellstrom, to provide an easy means for vertically adjusting the height of the door with respect to the frame.

Finally, Snyder discloses the use of a shim 19 for adjusting a horizontal position of hinge 10.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a shim, as taught by Snyder, to horizontally adjust the position of the door with respect to the door frame.

With respect to claim 9, Headrick in view of Fehr, Hellstrom et al. and Synder disclose the claimed invention but for the shim mounted to the door. However it would have been obvious to one of ordinary skill in the art to mount the shim to the door, since it has been held that a mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

Claims 4-7 and 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Synder as applied to claims 1-3 and 8-13 above, and further in view of Taber. Taber discloses a sealing means comprising a foamed polymeric seal 22.

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It would have been obvious to provide, Headrick, as modified above, with a sealing means, as taught by Taber, to ensure that the frame members of the system are sealingly engaged.

With respect to claim 42, Headrick in view of Fehr, Hellstrom et al. and Synder disclose the claimed invention but for the shim mounted to the door. However it would have been obvious to one of ordinary skill in the art to mount the shim to the door, since it has been held that a mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Synder as applied to claims 1-3 and 8-13 above. Headrick, as modified above, is silent concerning the specific adjustment range of the hinge.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the adjustable hinge with a range of adjustment of 0.2 to 10 mm to more accurately position the door within the door frame.

Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Kurtz. Headrick discloses an

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entryway system comprising a frame 11, 52 and a header (not shown) including a peripheral weather strip (not shown, but see column 6, lines 21-23) positioned on both sides of the frame, the frame bottom additionally comprising an extruded aluminum threshold member 12 joined to the frame with an end cap corner key 36 positioned between the frame and the threshold member, the threshold forming a tank 27 such that the threshold member can accumulate and drain environmental water to the exterior of the frame, and a slab 54 mounted on the frame with a hinge member 56, a sealing element 43 positioned between the end cap corner key and the water tank. Headrick is silent concerning a weather strip positioned substantially on the bottom of the frame and an adjustable hinge.

However, Fehr discloses a weather strip 5 positioned substantially on the bottom 15 of a frame and a top 16 of the frame to seal against a door when the door is in a closed position.

It would have been obvious to one of ordinary skill in the art to provide the snugger strip 31 of Headrick with a sealing function, as taught by Fehr, to better seal the slab with respect to the frame.

Additionally, Hellstrom discloses a vertically adjustable hinge.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a hinge, as taught by Hellstrom, to provide an easy means for vertically adjusting the height of the door with respect to the frame.

Finally, Kurtz discloses a transition block 44 mounted to a door 18, a shim 51 positionable adjacent to the transition block.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a shim system for horizontally adjusting a position of a door within a door frame, as taught by Kurtz, to more easily position the door with respect to the door frame.

With respect to claim 48, Headrick in view of Fehr, Hellstrom et al. and Kurtz disclose the claimed invention but for the shim mounted to the door. However it would have been obvious to one of ordinary skill in the art to mount the shim to the door, since it has been held that a mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

(10) Response to Argument

The rejection of claims 1-15, 40-44, 47 and 48 under 35 USC 103(a) is proper and should be maintained.

The appellant's invention is directed to ensuring the proper weather sealing protection for an exterior door. This is common problem and is very old as evidenced by the cited prior art. The appellant has attempted to solve this problem by combining well known elements into one invention. Such a combination would have been obvious to one of ordinary skill in the art as set forth above.

However, the appellant argues that it would not have been obvious to one of ordinary skill in the art to combine the teachings of the references as set forth above. The appellant argues the examiner has failed to identify the differences in the cited art and the claim. This argument is untenable. For each ground of rejection, the examiner has set forth each element of the reference which corresponds to the claimed element of the invention. For example, see the rejection of claims 1-3 and 8-13 above where the

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examiner has used the reference characters of the references which correspond to the claimed elements of the invention. Additionally, the examiner has identified the differences between the prior art and the claimed invention. For example, see the rejection of claims 1-3 and 8-13 above wherein the examiner sets forth what elements of the invention Headrick fails to disclose.

The appellant further argues that the examiner has failed to provide motivation to combine the references. Specifically, the appellant argues the examiner has failed to cite any motivation in the references themselves that would support the combination of the references. The rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Although there is no specific teachings in the references themselves, the motivation to combine the teachings of the references is generally available to one having ordinary skill in the art and said motivation for each combination of references has been set forth in the rejection above.

Additionally, the appellant argues the combination of Headrick and Fehr is not possible because the seal of Fehr requires modification to in order to operate with the threshold of Headrick. First, the seal 5 of Fehr is not a mitered seal joined together by fusion welding. Fehr teaches fusion welding the frame rather than the seal. Second, the door sill of Headrick can accommodate a seal. Note that Headrick discloses a seal

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type device 31 as shown in figures 2 and 3. Therefore, one with ordinary skill in the art would be motivated to provide the snugger strip 31 of Headrick with a sealing function as taught by Fehr to better seal the bottom of the door against wind driven rain. It should be noted that providing seals on a door sill is well known to one of ordinary skill in the art. The examiner is not stating that the actual seal of Fehr be incorporated into the door sill of Headrick since Fehr is only being used for the basic well know concept of providing a seal on a door sill for sealing against a door. Therefore, one of ordinary skill in the art need only modify the snugger strip 31 of Headrick such that it seals against the door when the door is in a closed position.

Next, the appellant argues that the examiner referred the appellant to Taber for motivation. The examiner disagrees. Taber is used only for the teaching of a foamed polymeric seal. It provides no motivation for the combination of Headrick and Fehr.

Finally, the appellant argues that one of ordinary skill in the art would not be motivated to provide the end cap of Headrick with a sealing element. The end cap 36 Headrick is held with respect to the threshold 12 via a crimped engagement. Therefore, it is possible that water could flow between the threshold and the end cap if, for example, the end cap were to fill with water due to a blockage. One with ordinary skill in the art would be motivated to provide the end cap with a sealing material, as taught by Taber, to prevent water from flowing between the threshold and the end cap and to provide an additional means for securing the end cap to the threshold. Obviously, one of ordinary skill in the art would not provide the sealing material in such a manner that it would interfere with the flow of water from the tank 27 into the end cap. For example,

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one of ordinary skill in the art would provide the sealing material of Taber on the exterior surface of the tank such that a seal would be formed between the exterior surface of the tank and the notch 43.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gregory J. Strimbu



Primary Examiner

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Conferees:

Richard Chilcot



Peter Cuomo

